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12 Angelique L.M. Clark

13 UNITED STATES BANKRUPTCY COURT

14 DISTRICT OF NEVADA

15 \* \* \*

16 In re:

17 Case No. BK-08-51131-GWZ  
18 Chapter 7

19 CETUS MORTGAGE, LTD.

20 Debtor.

21 Adv. No. \_\_\_\_\_

22 ANGELIQUE L.M. CLARK,  
23 TRUSTEE,

24 Plaintiff,

25 **COMPLAINT INCLUDING CLAIM  
26 FOR INJUNCTIVE RELIEF**

27 vs.

28 MARCILIN BENVIN, an  
individual,

Defendant.

Plaintiff Angelique L.M. Clark, Trustee, complains and alleges as follows:

I

**PARTIES, JURISDICTION AND VENUE**

1. This case presents claims that are related to a proceeding that is

1 pending under Title 11 USC and, therefore, this Court has jurisdiction over this  
2 matter pursuant to the provisions of 28 USC § 1334(b).

3 2. Part of the relief requested in this matter is the return of property  
4 belonging to a bankruptcy estate. Furthermore, this action affects the liquidation of  
5 the assets of a bankruptcy estate and the adjustment of debtor-creditor relationships.  
6 The claims alleged herein are core proceedings under the provisions of 28 USC §  
7 157.  
8

9 3. This Court is a proper venue for this case under the provisions of 28  
10 USC § 1409(a).

11 4. Plaintiff Angelique L.M. Clark ("Clark") is the duly appointed trustee of  
12 the Chapter 7 bankruptcy estate of Cetus Mortgage, Ltd. ("Cetus") pending before  
13 this Court as Case No. BK-08-51131 ("Bankruptcy").  
14

15 5. Defendant Marcilin Benvin ("Benvin") is, and at all times relevant to the  
16 matters alleged herein was, a resident of Washoe County, Nevada.

## 17 II

### 18 GENERAL ALLEGATIONS

19 6. Cetus is, and all times relevant to the matters alleged herein was, a  
20 Nevada corporation doing business in Washoe County, Nevada.  
21

22 7. At all times relevant to the matters alleged herein, Benvin was an  
23 employee and the president and a director of Cetus.

24 8. Cetus' primary business was the brokering of loans secured by  
25 residential and commercial properties located mostly in Northern Nevada.  
26

27 9. Cetus was licensed as a mortgage company by the Mortgage Lending  
28 Division of the State of Nevada Department of Business and Industry.

1           10. Typically, the loans brokered by Cetus were funded by investments  
2 solicited from third party investors willing to loan funds to Cetus' borrowers. The loans  
3 brokered by Cetus were occasionally funded by a single investor client, but in most  
4 instances the loans were funded with monies pooled from a group of investor clients.  
5

6           11. In some instances Cetus was one of a pool of investors participating in  
7 brokered loans, but its participations in the loans was normally a small percentage of  
8 the total loan pool.

9           12. In addition to brokering loans, Cetus also served as the servicing agent  
10 for the Cetus brokered loans. As the loan servicer, Cetus was supposed to receive  
11 payments from the borrowers, calculate each investor's percentage distribution and,  
12 after deducting its contractual fees, remit payment to the investors.  
13

14           13. In July 2008, the State of Nevada, Department of Business and Industry,  
15 Division of Mortgage Lending seized Cetus' assets on the basis of several complaints  
16 from investors that Cetus had:

- 17           a. Forged signatures on property conveyances;  
18           b. Altered property descriptions in deeds of trust without proper  
19 authorization; and  
20           c. Failed to properly account for investors' funds.

21           14. Cetus allowed its Nevada mortgage company license to expire without  
22 renewal on June 30, 2008.

23           15. In response to the State of Nevada's seizure of Cetus' assets, Benvin  
24 caused Cetus to file a voluntary petition for relief under Chapter 11 of the United States  
25 Bankruptcy Code with this Court on July 9, 2008, commencing the Bankruptcy.  
26

27           16. On July 17, 2008, Clark was appointed Trustee of Cetus' bankruptcy  
28

1 estate pursuant to the provisions of 11 USC § 1104. Cetus' Chapter 11 case was  
2 converted to Chapter 7 proceedings on August 19, 2008, and Clark was subsequently  
3 appointed Trustee of Cetus' Chapter 7 estate.  
4

5 17. Pursuant to 11 USC § 341, within a reasonable time after the  
6 commencement of a bankruptcy case, a meeting of creditors is to be held at which the  
7 trustee and creditors may ask questions of the debtor or its authorized representatives.

8 18. Cetus' § 341 meeting of creditors was held on September 15, 2008.  
9 Benvin appeared at Cetus' § 341 meeting of creditors as its authorized representative.  
10 Benvin was placed under oath, but other than testifying as to her name and status as  
11 Cetus' president, she repeatedly refused to answer dozens of questions posed by  
12 Clark's attorney and creditors on the basis the answers might incriminate her.  
13

14 19. Pursuant to 11 USC § 704, one of the duties of bankruptcy trustees is to  
15 investigate the financial affairs of the debtor. Clark has been investigating Cetus'  
16 financial affairs, but her investigation is not yet complete. Clark reserves the right to  
17 amend this Complaint to add more specific allegations regarding Benvin's conduct  
18 upon the completion of her investigation.  
19

20 20. To date, the Trustee's investigation has revealed that:

- 21 A. Contrary to Nevada State law and regulations governing mortgage  
22 companies, Cetus commingled funds in its trust accounts and its  
23 loan accounts;
- 24 B. Cetus used monies invested by lenders for purposes other than  
25 for which they were invested;
- 26 C. Cetus, in some instances, failed to repay investors when the loans  
27 they funded were paid in full by the borrowers;
- 28 D. Cetus' employees, including Benvin, forged investors' signatures  
on requests for reconveyance for the purpose of causing deed of  
trust liens to be released even though the loans secured by the

1 deed of trust had not been paid;

2 E. Cetus forged signatures on deeds of trust for the purpose of  
3 making it appear loans had been secured when in fact, the  
4 investors' funds were diverted to improve properties owned by  
Benvin or by entities in which she owned an interest;

5 F. Cetus' employees, including Benvin, "cut and pasted" official  
6 recording information from recorded deeds of trust and  
7 photocopied the recording information on entirely different deeds  
8 of trust to make it appear loans had been secured when, in fact,  
the loans were never made. Instead, the funds invested by  
9 investors who received the phony deeds of trust had been used  
by Cetus or Benvin for their own use.

10 21. The improper and illegal conduct alleged in paragraph 20 was either  
11 performed by Benvin or by Cetus employees at Benvin's direction.

12 22. The improper and illegal conduct alleged in paragraph 20 was performed  
13 for the purpose of defrauding investors and covering up the fact that funds invested  
14 with Cetus were being used by Cetus or Benvin for their own benefit.

15 23. During Clark's investigation of Cetus' books and records it has been  
16 discovered that many months of very critical banking records have either been  
17 destroyed or removed from its business premises. Furthermore, the files for many  
18 loans associated with the misdeeds alleged in paragraph 20 and at least one of Cetus'  
19 computers containing electronic copies of all of Cetus' records have been removed  
20 from Cetus' business premises. Clark is informed and believes, and on that basis  
21 alleges, that all of Cetus' missing books and records and the computer have been  
22 taken by Benvin.  
23  
24

25 III

26 FIRST CLAIM FOR RELIEF  
27 (Conversion)

28 24. Clark repeats and realleges each and every allegation contained in

1 paragraphs 1-23 herein, and incorporates the same herein as if set forth in their  
2 entirety.

3 25. Benvin, without legal basis or justification, improperly exercised dominion  
4 and control of money and property belonging to Cetus or its investors and thereby  
5 converted said property to her own use.  
6

7 26. By reason of the acts alleged herein, Benvin is guilty of the tort of  
8 conversion.

9 27. Benvin's conversion of Cetus' and its investors' assets caused injury and  
10 damage to Cetus in an amount to be proven at the trial in this matter.

11 28. Clark reserves the right to amend this Complaint to allege additional and  
12 further claims related to Benvin's unlawful conversion of Cetus' assets including, but  
13 not limited to, a claim for punitive damages pursuant to NRS § 42.001, et seq. as facts  
14 supporting such additional claims are discovered in this matter.  
15

16 WHEREFORE, Clark prays for relief as hereinafter requested.

17 **IV**

18 **SECOND CLAIM FOR RELIEF**  
19 **(Embezzlement)**

20 29. Clark repeats and realleges each and every allegation contained in  
21 paragraphs 1-28 herein, and incorporates the same herein as if set forth in their entirety.  
22

23 30. Benvin, in her capacity as an officer, director and employee of Cetus, owed  
24 fiduciary duties to Cetus, including the duties to use Cetus' and its investors' property for  
25 the conduct of its business and not to convert the same to her own use and benefit.

26 31. By reason of Benvin's conduct as alleged herein, she is guilty of embezzling  
27 Cetus' and its investors' property.  
28

WHEREFORE, Clark prays for relief as hereinafter requested.

### THIRD CLAIM FOR RELIEF (Breach of Fiduciary Duty)

34. Benvin, in her capacity as an officer and director of Cetus, owed it a fiduciary duty to exercise her duties in good faith, in the best interests of the corporation and without misconduct, fraud or knowing violations of the law.

36. Cetus has been damaged by Benvin's breach of her fiduciary duties to it in an amount to be proven at the trial in this matter.

VI

37. Clark repeats and realleges each and every allegation contained in paragraphs 1-36 herein, and incorporates the same herein as if set forth in their entirety.

38. Benvin, in her capacity as an officer and director of Cetus, owed it duties of loyalty and care requiring her to conduct its business on an informed basis and to

1 maintain Cetus' best interests over anyone else's interests, including her own.

2 39. By reason of Benvin's conduct as alleged herein, she is guilty of  
3 breaching her duties of loyalty and care owed to Cetus.

4 40. Cetus has been damaged by Benvin's breach of her duties of loyalty and  
5 care to it in an amount to be proven at the trial in this matter.

6 WHEREFORE, Clark prays for relief as hereinafter requested.

7  
8 **VII**

9 **FIFTH CLAIM FOR RELIEF**  
10 **(Turnover of Property – 11 USC § 542)**

11 41. Clark repeats and realleges each and every allegation contained in  
12 paragraphs 1-40 herein, and incorporates the same herein as if set forth in their  
13 entirety.

14 42. The money and other property converted or embezzled by Benvin as  
15 alleged herein constituted property Clark could use, sell or lease pursuant to the  
16 provisions of 11 USC § 363.

17 43. Pursuant to 11 USC § 542(a), a person in custody or control of property  
18 a trustee could use, sell or lease pursuant to 11 USC § 363 shall deliver the same to  
19 the trustee and account for all such property.

20 44. Benvin is obligated to return all of Cetus' property to Clark and to account  
21 for all such property.

22 WHEREFORE, Clark prays for relief as hereinafter requested.

23  
24 **VIII**

25 **SIXTH CLAIM FOR RELIEF**  
26 **(Injunctive Relief)**

27 45. Clark repeats and realleges each and every allegation contained in  
28

1 paragraphs 1-44 herein, and incorporates the same herein as if set forth in their  
2 entirety.

3 46. Clark is informed and believes, and on that basis alleges, that some or all  
4 of the monies converted or embezzled by Benvin were used to improve various real  
5 properties owned by Benvin or by entities in which she has an interest or that the  
6 monies were placed in banks or brokerage accounts maintained in her name, her  
7 husband's name or in the name of entities in which Benvin has an interest.  
8

9 47. Clark is informed and believes, and on that basis alleges, that Benvin  
10 and her husband are in the process of moving from the state of Nevada and have  
11 already removed their most liquid assets from the state. The Benvins are also in the  
12 process of selling or otherwise disposing their real property assets in an effort to  
13 prevent Clark from recovering Cetus' property.  
14

15 48. If Benvin is allowed to continue to dispose of her assets or remove them  
16 from the state of Nevada, Clark's efforts to recover the property converted or  
17 embezzled by Benvin would be frustrated and Cetus' bankruptcy estate would be  
18 irreparably harmed.  
19

20 49. It is essential to this Court's power and ability to render a meaningful  
21 decision on the merits of Clark's claims that the status quo be preserved pending the  
22 trial in this matter.

23 WHEREFORE, Clark prays for relief as follows:

24 A. For judgment against Benvin on the Trustee's claims for conversion,  
25 embezzlement, breach of fiduciary duties and breach of the duties of care and loyalty  
26 in an amount to be proven at the trial in this matter;  
27

28 B. For an order directing Benvin to deliver any of Cetus' property in her

1 possession to the Trustee pursuant to 11 USC § 542 and requiring her to account for  
2 all of Cetus' property;

3 C. For an injunction prohibiting Benvin from selling, transferring,  
4 encumbering or otherwise disposing of any of her property, real or personal, pending  
5 payment of all of her obligations and liabilities to Cetus in full;  
6

7 D. For costs of suit;

8 E. For an award of reasonable attorney's fees incurred in connection with  
9 the prosecution of this action; and

10 F. For such other and further relief as is just and appropriate under the  
11 circumstances.

12 DATED this 26<sup>th</sup> day of November, 2008.

13  
14 WOODBURN and WEDGE

15  
16 By 

17 John F. Murtha, Esq.  
18 Attorneys for Trustee  
19 Angelique L.M. Clark  
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